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May 31, 1996

VIA HAND DELIVERY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Erratum to Reply Comments of Cox Communications, Inc.

Dear Mr. Caton:

Enclosed is an Erratum to the above-referenced Reply Comments. Due to a computer malfunction the Table of Contents of the original Reply Comments was incorrect. We have also corrected typographical errors in the following footnotes: footnote 38, footnote 75 and footnote 81. This Erratum corrects these errors but makes no substantive changes to the original filing. Please associate the attached corrected pages with the original pleading filed May 30, 1996. A date-stamped caption page from the original filing is attached for reference.

Should you have any questions regarding this matter, please contact the undersigned counsel.

Very truly yours,

Laura Phillips

Laura H. Phillips
Counsel for Cox Communications, Inc.

Enclosures (original and 12 copies)

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BEFORE THE
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MAY 30 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	

To: The Commission

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Werner K. Hartenberger
Laura H. Phillips
J.G. Harrington

Its Attorneys

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May 30, 1996

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3. The Cox Model Meets the Need for National Standards Without Unreasonably Limiting the Ability or Incentive of Parties to Reach Negotiated Agreements.

The framework proposed in Cox's initial comments provides a model the Commission can use to equalize bargaining power. The Cox model is based on the principles adopted by Congress in the 1996 Act and is consistent with the statutory bias in favor of negotiations and State determinations in arbitrations.[38/] It also addresses the concerns raised by parties who object to national standards or who express concerns about the statutory price differentials causing arbitrage.

Under that framework, arbitrations would be governed by a set of standards, but negotiations would be subject only to the limits of Section 252(e). In an arbitration, the compensation for reciprocal transport and termination could range from bill and keep to LRIC, and the prices for unbundled elements could range from TSLRIC, allocated to individual elements, to FDC (in exceptional cases). States would to use bill and keep as a proxy for the costs of transport and termination and a specific model, such as BCM or the Hatfield study, as a proxy for the costs of unbundled elements when approximate cost cannot be easily determined. Bill and keep would be adopted as an interim compensation mechanism for transport and termination during negotiations and, if a state is unable to determine the appropriate compensation during the statutory 270 day period, until the state reaches a decision. Finally, all of a LEC's existing points of interconnection and all of its existing technical forms of interconnection would be deemed reasonable, as would any

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38/ This model is described in more detail in Cox's comments at 24-29. The specific terms used to describe the pricing boundaries for transport and termination and facilities obtained under Section 251(c) are defined in a glossary attached hereto as Exhibit 1. This glossary also was attached to Cox's initial comments.

Furthermore, the LECs are in no position to claim that they have any expectation of recovering their historic costs. Over the last several years many LECs have written down their telephone assets. These write-downs occurred because the LECs claimed that they did not expect to recover the full costs of deploying their networks in anticipation of competitive networks.[75/] They cannot now claim to have an expectation that historic costs will be recovered, especially because investor expectations — the only expectations that matter — should have been adjusted in light of the write-downs.

Moreover, ILECs already have recovered a substantial portion (if not all) of their embedded costs. Even accepting the USTA claim that the adoption of TSLRIC would result in under-recovery of between $13 and $17 billion in embedded costs (an amount that is less than the anticipatory writedowns ILECs already have taken), these figures would constitute only a small fraction of the profits that LECs have earned. Over the past ten years, for example, the profits of the BOCs and GTE have exceeded $70 billion.[76/] In light of these substantial and recurring returns, the LECs have no entitlement to additional returns on embedded costs in the future.

In addition, despite the incumbents' criticism of TSLRIC, there is no guarantee that TSLRIC in any particular case will yield a result less than FDC. The relative level of TSLRIC and FDC will depend on many factors, such as the relative costs of inputs.[77/]

75/ Based on the SEC filings of the RBOCs and GTE, these writedowns exceed a total of $23 billion.

76/ This figure is based on review of the SEC filings of the RBOCs and GTE. Absent the writedowns noted above, total profits would have exceeded $93 billion.

77/ For instance, services that an incumbent provides that depend upon highly-depreciated assets may have relatively low fully distributed costs. In addition, some inputs used to provide a service, such as labor, are more expensive today than they would have

(continued...)

as shown above, many incumbent LECs already have informed shareholders that they do not expect to recover all of their embedded costs by writing down the financial book value of their telephony assets.[81] Consequently, FDC is the absolute ceiling of what a LEC could reasonably expect to recover for unbundled elements or for Section 251(c) interconnection; any greater cost recovery would constitute an unjustified windfall.

The incumbent LECs' claim to arbitrated prices for unbundled elements that exceed FDC apparently is based on the presumption that incumbents must be made whole by their competitors for the impact of competition. As a legal matter, this is simply untrue — previous regulation is never a guarantee of future profits and the law does not protect a competitor from the effects of lawful competition.[82]

The idea that incumbents should be entitled to recover the monopoly profits they will lose as a result of competition is derived from the discredited efficient component pricing rule (the "ECPR").[83] Despite the Commission's tentative rejection of ECPR as a credible pricing method, several incumbents spend considerable effort in an attempt to rehabilitate

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80/ (...continued)
reasonableness. See Washington Gas Light v. Baker, 188 F.2d 11, 15.

81/ See supra page 26. In addition, BellSouth suggests that embedded cost and book cost are, in fact, the same. Comments of BellSouth at 56. To the extent that this is true, the written-down values of telephony assets on the companys' financial books would be the correct ones to use to determine embedded cost, not the values on LECs' regulatory books.

82/ See Market St. Ry., 324 U.S. at 566.

83/ The ECPR holds that a monopolist should be able to recover all of its expected monopoly profits from its competitors if those competitors must obtain some elements of their service from the monopolist. The Notice correctly rejects the ECPR as an unreasonable pricing theory. Notice at ¶ 148.